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STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1222

Bradley Carl Brown, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed March 24, 2014
Affirmed
Connolly, Judge

Olmsted County District Court
File No. 55-CR-83-5850

Cathryn Middlebrook, Chief Appellate Public Defender, Sean Michael McGuire, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Assistant County Attorney, Rochester, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Chutich, Judge; and Smith, Judge.

U N P U B L I S H E D   O P I N I O N

CONNOLLY, Judge

Appellant challenges the postconviction court's denial of his petition for postconviction relief, arguing that it erred by not ordering an evidentiary hearing to determine whether the doctrine of equitable tolling should excuse his untimely petition. We affirm.

FACTS

On May 31, 1983, appellant Bradley C. Brown, pleaded guilty to one count of simple robbery in violation of Minn. Stat. § 609.24 (1982). The district court sentenced him to 24 months in prison. On October 29, 1984, appellant pleaded guilty to conspiracy to commit aggravated robbery in violation of Minn. Stat. §§ 609.175, 609.245 (1984). The district court sentenced appellant to 40 and 1/2 months in prison. Appellant did not seek direct appeal of either conviction.

In 2000, appellant was charged with bank robbery in federal court. The federal court determined that appellant had previously committed two serious violent felonies and, in accordance with 18 U.S.C. § 3559 (2000), sentenced him to life in prison without the possibility of parole. Appellant appealed his sentence and the Seventh Circuit affirmed. *See United States v. Brown*, 276 F.3d 930 (7th Cir. 2002).

On March 5, 2012, appellant filed his pro se petition for postconviction relief. On February 1, 2013, he submitted an amended petition. In his petition, appellant argued that his guilty pleas from 1983 and 1985 were not intelligently entered because his attorney failed to advise him that these convictions could potentially be used to enhance a

future federal sentence. He also requested that the court reach the merits of his petition by tolling the statute of limitations for submitting a postconviction petition.

On May 31, 2013, the postconviction court dismissed appellant's petition for postconviction relief without holding an evidentiary hearing. The postconviction court determined that the petition was untimely and that appellant's attorney was not obligated to inform him that his state court convictions could be used to enhance a federal sentence. The postconviction court did not decide whether the time limit for submitting appellant's petition is subject to equitable tolling because it determined that the petition fails on the merits.

D E C I S I O N

Appellant argues that the postconviction court erred by not holding an evidentiary hearing on his claim that his untimely petition for postconviction relief is excused under the doctrine of equitable tolling.[1] We disagree. On appeal from a postconviction court's denial of relief, we review the denial of postconviction relief for an abuse of discretion and review the postconviction court's legal conclusions de novo. *Roby v. State*, 808 N.W.2d 20, 24 (Minn. 2011). A postconviction court is required to hold an evidentiary hearing unless "the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2012).

A. Timeliness

A person convicted of a crime "may commence a proceeding to secure [postconviction] relief by filing a petition in the district court in the county in which the

[1] The arguments presented in appellant's pro se supplemental brief are addressed herein.

conviction was had." Minn. Stat. § 590.01, subd. 1 (2012). Generally, an individual must file a petition for postconviction relief within two years of "(1) the entry of judgment of conviction or sentence if no direct appeal is filed; or (2) an appellate court's disposition of petitioner's direct appeal." Minn. Stat. § 590.01, subd. 4(a) (2012). For defendants whose convictions became final before August 1, 2005, the two-year statute of limitations expired on July 31, 2007. *See* 2005 Minn. Laws ch. 136, art. 14, § 13, at 1098.

Appellant concedes that his petition is untimely but argues that he qualifies for the interests-of-justice exception to the postconviction statute of limitation.[2] We disagree. There are five exceptions to the general time-bar, including the interests-of-justice exception. *See* Minn. Stat. § 590.01, subd. 4(b). To satisfy the interests-of-justice exception, appellant must show that his postconviction petition "is not frivolous and is in the interests of justice." *Id.*, subd. 4(b)(5).

The postconviction court concluded that appellant's claims based on the interests-of-justice exception were untimely. A postconviction petition that invokes an exception under Minn. Stat. § 590.01, subd. 4(b) "must be filed within two years of the date the [interests-of-justice] claim arises." Minn. Stat. § 590.01, subd. 4(c). "[A] petitioner's claim under [Minn. Stat.] § 590.01, subd. 4(b)(5), arises when the petitioner knew or

[2] Appellant seeks postconviction relief from two convictions: one from 1983 and one from 1985. There is no dispute that these convictions became final before August 1, 2005. Thus, to be timely, appellant's petition for postconviction relief should have been filed by July 31, 2007. Appellant did not file his petition until 2012.

should have known that he had a claim." *Sanchez v. State*, 816 N.W.2d 550, 560 (Minn. 2012).

The alleged injustice that appellant seeks to remedy is the imposition of his federal life sentence based on his two state court convictions. The federal court sentenced appellant to life in prison in 2001. This is when he knew or should have known of his claims to withdraw his 1983 and 1985 guilty pleas. But he did not file his initial petition for postconviction relief until 2012, which is approximately 11 years after his claims arose. Because appellant did not file his postconviction petition within the permissible timeframe, we conclude that the postconviction court did not err by dismissing appellant's petition as untimely.

B. Equitable tolling

Even though his petition is untimely, appellant argues that the time limitation in subdivision 4(c) should be tolled under the doctrine of equitable tolling. "The doctrine of equitable tolling allows a court to consider the merits of a claim when it would otherwise be barred by a statute of limitations." *Sanchez*, 816 N.W.2d at 560. In *Holland v. Florida*, the United States Supreme Court held that the doctrine of equitable tolling applies to the federal habeas corpus statute and "that a petitioner is entitled to equitable tolling only if he shows (1) that he has been pursuing his rights diligently, and (2) some extraordinary circumstance stood in his way and prevented timely filing." 130 S. Ct. 2549, 2562 (2010) (quotations and citation omitted).

The language of Minn. Stat. § 590.01, subd. 4(c) does not state that the two-year time limit can be tolled. But because the statute of limitations in Minn. Stat. § 590.01,

subd. 4 is nonjurisdictional, the Minnesota Supreme Court has assumed, without deciding that the limitations period may be tolled. *See Sanchez*, 816 N.W.2d at 561; *Carlton v. State*, 816 N.W.2d 590, 606 (Minn. 2012); *Roby*, 808 N.W.2d at 25. "[T]he standard we [use] to toll statutes of limitations is necessarily a high one." *Sanchez*, 816 N.W.2d at 561.

The postconviction court declined to reach the issue of whether the statute of limitations for seeking postconviction relief could be tolled in appellant's case because it determined that appellant's petition was without merit. *See* Minn. Stat. § 590.04, subd. 1. We conclude that the postconviction court did not err by not holding an evidentiary hearing to consider the equitable-tolling doctrine because petitioner is not entitled to relief on his underlying claim.

Appellant argues that he should be allowed to withdraw his 1983 and 1985 guilty pleas because his counsel did not inform him that these convictions could later be used to enhance a federal sentence. At any time, the district court "must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice exists if a guilty plea is invalid, meaning it is not accurate, voluntary, and intelligent. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). But "[a] defendant's guilty plea may be constitutionally invalid if the defendant received ineffective assistance of counsel." *Sames v. State*, 805 N.W.2d 565, 567 (Minn. App. 2011).

> To prevail on a claim of ineffective assistance of counsel, a defendant must prove, first, that counsel's performance was deficient because it fell below an objective standard of reasonableness and, second, that the defendant was prejudiced by his counsel's deficient performance because a reasonable probability exists that, but for counsel's errors, the outcome would have been different.

Id. (quotations omitted).

In his petition for postconviction relief, appellant relied on *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010) to argue that his attorney's performance was objectively unreasonable because he did not inform appellant of the potential consequences of his 1983 and 1985 convictions. In *Padilla*, the United States Supreme Court held that, prior to entering a guilty plea, defense counsel must advise the defendant of the immigration consequences of a conviction. 130 S. Ct. at 1482. If counsel fails to do so, the representation is deficient as a matter of law. *Id.* at 1483.

Appellant's reliance on *Padilla* is misplaced. First, the Minnesota Supreme Court decided that the *Padilla* rule does not apply retroactively. *Campos v. State*, 816 N.W.2d 480, 499 (Minn. 2012). Appellant's convictions became final in 1983 and 1985, which is more than 20 years before the *Padilla* decision. Second, this court decided that *Padilla* only applies to the context of deportation. *Sames*, 805 N.W.2d at 569-70. Appellant's claim does not deal with the consequences of deportation.

Minnesota instead follows the distinction between collateral and direct consequences to determine whether an attorney's conduct fell below the objective standard of reasonableness. *Id.* at 568. "[D]irect consequences are those which flow definitely, immediately, and automatically from the guilty plea," such as "the maximum

sentence to be imposed and the amount of any fine." *Alanis v. State*, 583 N.W.2d 573, 578 (Minn. 1998), *abrogated in part by Padilla*, 130 S. Ct. at 1473. On the other hand, collateral consequences do not flow definitely, immediately, and automatically from the guilty plea. *Sames*, 805 N.W.2d at 568. Counsel must advise clients of direct, but not collateral, consequences. *Id.* "[I]gnorance of a collateral consequence does not entitle a criminal defendant to withdraw a guilty plea." *Id.* (quotation omitted).

The potential for a subsequent sentence enhancement if the offender commits a later offense is a collateral consequence to the guilty plea. *State v. Crump*, 826 N.W.2d 838, 843 (Minn. App. 2013) (explaining that "the possible effect that appellant's plea has upon a future charge is a collateral . . . consequence," and that "a defendant's ignorance of those consequences does not render the guilty plea unintelligent or invalid."), *review denied* (Minn. May 21, 2013); *State v. Garritsen*, 371 N.W.2d 251, 253 (Minn. App. 1985) ("A guilty plea made intelligently and knowingly will not be invalidated simply because a defendant is not informed that if he commits additional crimes in another jurisdiction, that jurisdiction may sentence him as a habitual offender."). Because the possibility of an enhanced future sentence is a collateral consequence of pleading guilty, we conclude that appellant's attorney did not act unreasonably in failing to inform appellant of this possibility. *See Sames*, 805 N.W.2d at 568. Consequently, the postconviction court did not err by dismissing appellant's petition for postconviction relief without holding an evidentiary hearing because appellant's petition and the record conclusively show that he is not entitled to relief. Minn. Stat. § 590.04, subd. 1.

Affirmed.